IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 332 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANARASISINGH C RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 332 of 2003

MR RN SHAH for Petitioner No. 1

MR NIRAL R MEHTA for Petitioner No. 1

MR IM PANDYA, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/04/2004

ORAL JUDGEMENT

1. The petitioner is the original accused no.1 of CR No. I. 47/1994 for the offences punishable under

Sections 143, 147, 148, 149, 395, 397, 427 and 201 of the Indian Penal Code and Sec.135 of the Bombay Police Act, inter alia, alleging that on 8.3.1994 between 6.30 & 7.30 P.M. the complainant Bharatbhai Ratilal who is the owner of STD Booth at Sabarmati, along with his father in law Arvindbhai had gone out and at that time his brother in law Sanjay Vyas and sister-in-law Shilpaben were looking after the business. At that time, one Mahendrabhai Ramsingh has come to the STD Booth for making a phone call and raised dispute about the amount of bill of Rs.164/. Said Mahendrabhai was insisting that he is supposed to pay Rs.102/ only and nothing more than that amount. At that point of time, complainant returned with his father-in-law and they tried to explain the correctness of the bill given to Mahendrabhai. Meanwhile, accused persons came to the STD Booth and accused no.3 Surendrabhai asked the complainant as to who is the owner of the STD Booth. During the exchange of words, scuffle took place and incident has been unfolded by the prosecution in the complaint as well as by the prosecution witnesses in their statements.

2. The charge of the offence punishable under Sec.397 of Indian Penal Code is framed on the statement of P.W. Kokilaben. It is submitted that as alleged in the complaint and papers of investigation, P.W. Kokilaben was robbed and her golden chain was snatched and was taken away by accused no.1 and while committing this offence of snatching of a gold chain, P.W. Kokilaben has been caused injury. The say of the prosecution is that offence against the property is committed and gold chain has been snatched away by using force under threat to cause death or grievous hurt and, therefore, offence punishable under Sec.397 of Indian Penal Code can be said to have been committed by the accused. It is argued by ld. APP that the Court is not supposed to appreciate the contents of police statement or complaint.

3. After committal of the case by ld. JMFC, the same is registered as Sessions Case No. 199/1994. Pending the hearing of said Sessions Case, the accused persons submitted an application for discharge under Sec.228(1) of CrPC for discharging them from the offences alleged against them. However, ld. Add. Sessions Judge, Ahmedabad (Rural), vide order dated 16.6.2003 below application exh.18, rejected the said application an directed to frame charges as discussed in the said order. While rejecting the said application, the ld. Judge refused to accept the contentions raised by the accused persons and ultimately held that there is sufficient material on record to show, prima facie, that

accused has committed offence under Sec.394 R/w Sec.397 of Indian Penal Code. It is further held that from the material on record, strong suspicion can be raised that the accused persons have committed an offence punishable under Sec.397 of Indian Penal Code R/w other serious offences mentioned in the charge. Let me quote relevant Sections 394 & 397 of Indian Penal Code herein below:-

"394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

"397. If, at any time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

4. To bring home the charge of the offence punishable under Section 397 of the Indian Penal Code, the prosecution is supposed to satisfy the Court that the essential ingredients to convict the accused for the said offence are there on record i.e. the papers of investigation. Of course, there is prima facie evidence that the accused has committed robbery, but the other three essential ingredients are not found from the papers of investigation namely the use of deadly weapon for the purpose of committing robbery, causing of grievous hurt by the accused to any person and the third one that there is no sufficient evidence, prima facie, that an attempt to cause death or to cause grievous hurt to any person with a view to commit robbery is found. So, voluntarily causing of hurt to any person in committing robbery is one type of offence and the offence punishable under Sec.397 of IPC does not create substantive offence but merely prescribes a minimum sentence for the offence of robbery and it can be under the aggravating circumstances mentioned in the said section. Sec.397 of IPC relates only to the offender and it can not be applied constructively. Of course, the word "uses" in Sec.397 of IPC and words "is armed" in Section 398 of IPC have to be given identical meaning. However, in the case on hand, the ld. Judge ought to have held that the basic ingredients of the offence punishable under Sec.397 of Indian Penal Code are missing.

5. I have carefully gone through the impugned order

passed by ld. Addl. Sessions Judge and discussion on factual as well as on legal aspect made in para-11, 12 & 13 & 14 of the order. Ld.Judge has referred the decision in the case of L.K.Advani & Ors. v/s Central Bureau of Investigation, reported in 1997(4) Crimes P.1 (Delhi High Court) and has quoted relevant observations made in para-44 of the said decision which are reproduced herein below for the sake of brevity and convenience:-

"44. It is manifest from the above that the charges can be framed against an accused person only in those discerning few cases where the Court comes to the conclusion that the prosecution has shown a prima facie case against the accused and there is evidence before the Court which is capable of being converted into legal evidence later on during the subsequent proceedings after the framing of the charges. The matter with regard to the framing of the charges came up for consideration in a catena of authorities wherein time and again it was observed that the prosecution must show a prima facie case against the accused in order to enable the Court to frame a charge against him. If the evidence before the Court is of such type which if unrebutted and un-challenged by way of cross-examination, would not be sufficient enough to convict the accused ultimately then the Court would not be justified in framing the charge against the accused. The Court at that stage is under no obligation to make an elaborate enquiry by shifting and weighing the material to find out a case against the accused beyond a reasonable doubt which it is required to do at the time of final hearing. The Judge at that preliminary stage is simply required to find out that there was material which may lead to the inference that the accused has committed an offence. Thus, the charge can be framed by the Court against an accused if the material placed before it raises a strong suspicion that the accused has committed an offence. In other words, the Court would be justified in framing the charges against an accused if the prosecution has sown the seed in the form of the incriminating material which has got the potential to develop itself into a full-fledged tree of conviction later on."

On plain reading of Sec.397 of Indian Penal Code, if read in the context of the facts pleaded by prosecution, complaint as well as in the statement of Kokilaben, in light of medical evidence collected by

Investing Agency, it will be difficult to say that offence under Sec.397 of Indian Penal Code has been committed or that there was any intention to commit such offence. In response to the query raised by the Court, ld. APP Mr. Pandya has fairly accepted that golden chain allegedly taken away by the present petitioner accused no.1, has not been recovered by the Investigating Officer in any form neither in the form of chain or broken piece of chain or in melted gold form. Injury found on the body of Kokila, as per medical evidence is an abrasion on nose which is a simple injury and that part of the body has no relevant from the part of the body on which normally chains are being put by females. It is also not the case of P.W. Kokilaben that she was under any type of threat either of death or grievous hurt.

6. Even if it is accepted for the sake of arguments that some force was used while snatching away gold chain from P.W. Kokila, would not be sufficient to substantiate the charge of offence punishable under Sec.397 of Indian Penal Code. The basic element required to be established by the prosecution for commission of the offence under Sec.397 of Indian Penal Code, prima facie, are lacking from the evidence collected by the prosecution.

7. In view of the facts and circumstances as above, medical evidence collected and evidence of P.W. Kokilaben, this Court is of the view that no offence under Sec.397 of Indian Penal Code is made out. Ld. Addl. Sessions Judge ought to have discharged the petitioner accused no.1 of the offence punishable under Sec.397 of Indian Penal Code. There is no material i.e. fact for holding that the offence by petitioner accused no.1 is, prima faice,made out under Sec.394 R/w Sec.397 of Indian Penal Code. Both these offences are independent and first one is less grievous than the second one i.e. offence punishable under Sec.397 of Indian Penal Code. For short, finding recorded by ld. Addl. Sessions Judge, being erroneous, requires to be reversed and appeal requires to be allowed.

8. Revision Application is partly allowed. The charge framed against the petitioner accused no.1 for the offence punishable under Sec.397 of Indian Penal Code is hereby quashed and set aside. The petitioner accused no.1 is acquitted of the offence punishable under Sec.397 of Indian Penal Code. The impugned order dated 16.06.2003 passed by ld. Addl. Sessions Judge, Ahmedabad (Rural) below application exh.18 in Sessions

Case No. 199/94 stands modified accordingly. Rest of the order stands unaltered.

9. Rule is made absolute accordingly.

[C.K. BUCH, J]

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